

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8767 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAMAJILA ARTHILA ABHYAS

VARTAL TRUST

Versus

STATE OF GUJARAT

Appearance:

MR BAIJU JOSHI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/11/98

ORAL JUDGEMENT

Leave to amend cause title.

Rule. Service of rule has been waived by Mr. K.T. Dave, Ld. A.G.P. for the respondents.

1. On 13/10/1998 following order was passed :-

"Leave to annex the impugned order dated 22/4/1998. Mr. Joshi, learned advocate appearing for the petitioner submits that in an identical petition being Spl. C.A. No. 3749/98, this Court had an occasion to pass order as per Annex. "E". Notice returnable on 16/10/98. DSP."

2. This matter was to be disposed of as per the order that follows in the line of the matters similarly placed and disposed of earlier :-

This petition challenges proposed action consequent upon impugned order passed by the District Education Officer, Mehsana for recovery of grant.

3. The petitioner school was running vocational training classes as per the Government scheme under which the expenses for running the scheme were to be borne by the Central Government. The Government is also providing for grant for purchasing equipments for such vocation courses. One of the conditions of the grant was as under:-

"Before the grant is paid the management receiving the equipment grant shall be required to give an undertaking to the effect that the management shall refund to Government the equipment grant received by it in case the school is closed within a period of three years from the date of receipt of the equipment grant."

In accordance with the said clause of the scheme, the petitioner - institution was granted equipment grant of Rs.75,000/- for purchasing the necessary equipments.

4. The petitioner - school commenced imparting instructions for the vocation courses from June, 1992 but could not continue such classes after June 1996-97.

5. The learned counsel for the petitioner submits that as per Rule 116.2 of the Grant in Aid Code quoted hereinabove, the Government is entitled to demand or recover such equipment grant only if the vocational course in question is closed within a period of three years from the date of receipt of the equipment grant, but in the instant case, the petitioner institution had run the vocational training classes for more than three years, in fact for five years and, therefore, the Government is not entitled to invoke the aforesaid

undertaking or the aforesaid provisions. It is submitted that in any case the Government can at the most ask for return of the used equipments purchased with the Government grant.

6. It appears that the District Education officer, Mehsana at Patan proposes to take action of recovery of grant taking into account the instructions of the Commissioner of High Education, Ahmedabad. In view of the facts and circumstances of the case, it appears to the Court to be just and proper to direct the petitioner to make a representation to the State Government in the Education Department to ventilate its grievances which are the subject matter of this petition.

7. In order to see that the petitioner's representation does not become infructuous or that the petitioner-institution is not denied its grant for the primary, secondary and higher secondary sections of the petitioner-institution, it is directed that till the Government takes decision on the aforesaid representation, the respondents shall not implement proposed action of recovery of grant. This order is passed on the basis of the assurance given by the learned counsel for the petitioner that the petitioner-institution shall cooperate with the authority for expeditious disposal of the aforesaid representation and that as and when the petitioner is called, the petitioner will remain present through its authorised representative/s.

8. In order to secure the interest of the Government, it would also be just and proper to impose some conditions on the petitioner. Accordingly, on behalf of the petitioner - institution, undertaking will be filed by the Managing Trustee before the Government that in case the petitioner does not succeed in persuading the authority to accept its representation, subject to its right to challenge such decision before this Court, the petitioner - institution shall refund the amount of equipment grant proposed to be recovered from the petitioner. A copy of such undertaking will be furnished to the District Education Officer, Mehsana at Patan.

9. In view of the aforesaid arrangement, the petition is disposed of with the aforesaid observations and directions so that as soon as the petitioner files undertaking as stated above, the respondents shall not implement proposed action of recovery of grant and also the respondents shall not withhold grant for other sections of the petitioner school. In case the decision

of the Government on the aforesaid representation is adverse to the petitioner, the same shall not be implemented for a period of three weeks from the date of despatch of the decision to the petitioner by Registered Post A.D.

10. The representation to be made by the petitioner might be heard and decided by the Government through any of its competent officers as per the rules of business of the Government of Gujarat. Such competent officer is, therefore, directed to hear and decide the representation accordingly.

Subject to aforesaid direction, rule is discharged. No order as to cost. DSP.

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PVR.